FILE COPY

FILED
JUN 26 19
CHARLES ELMORE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. [redacted]6

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* ADELAIDA GONZALEZ,

Petitioner,

vs.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS AND BRIEF IN SUPPORT THEREOF.

FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
ALLISON D. GIBBS,
Counsel for Petitioner,
2 Rector Street,
New York City, N. Y.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

TABLE OF CONTENTS.

	PAGE
PETITION FOR WRIT OF CERTIORARI	1
(A) Summary Statement of the Matter Involved	1
(B) Reasons Relied on for the Allowance of the Writ	6
BRIEF IN SUPPORT OF PETITION	9
I. The Opinions of the Courts Below	9
II. Jurisdiction	10
III. Statement of the Case	12
IV. Specification of Errors	12
V. Argument	14
SUMMARY OF ARGUMENT	14
Point A. The Testamentary Intentions of Petronila de Guzman	14
Point B. The Effect of the Canon of 1918	17
Point C. This Should Be Treated as a Class Suit, if Such a Suit Is Deemed Necessary	22
CONCLUSION	24

INDEX OF AUTHORITIES.

Cases Cited.

	PAGE
Barlin *vs.* Ramirez, 7 Phil. Rep. 41	20
Banton *vs.* Belt Line Ry., 268 U. S. 413, 417	20
Catholic Church *vs.* Municipality of Badoc, 10 Phil. Rep. 659, 671	19
Capellania de Tombobong *vs.* Antonio, 8 Phil. Rep. 683	16
Capellania de Tombobong *vs.* Cruz, 9 Phil. Rep. 145	15, 16
Cariño *vs.* Insular Government, 212 U. S. 449	11, 19
City of Manila *vs.* Archbishop of Manila, 36 Phil. Rep. 815	15
De La Rama *vs.* De La Rama, 201 U. S. 303; 241 U. S. 154	11
Evangelista *vs.* Ver, 8 Phil. Rep. 653	20
Furness, Withy & Co., Ltd. *vs.* Yang Tse Insurance Association, Ltd., 242 U. S. 430	12
Gonzalez *vs.* Harty, 32 Phil. Rep. 328	16
Gray *vs.* Noholoa, 214 U. S. 108	17
Harty *vs.* Sandin, 11 Phil. Rep. 451	20
Ingenohl *vs.* Olsen, 273 U. S. 541	11
Jurisprudencia Civil, Vol. 8, p. 372	18
Kenaday *vs.* Sinnott, 179 U. S. 606, 616	17
Neeley *vs.* Jones, 16 W. Va. 625, 648	23
Ponce *vs.* Roman Catholic Church, 210 U. S. 296	20
Prendergast *vs.* New York Telephone Co., 262 U. S. 43, 48	20

PAGE

Smith *vs.* Swormstedt, 16 How. 288 23
Stewart *vs.* Dunham, 115 U. S. 61 23
Supreme Tribe of Ben Hur *vs.* Cauble, 255 U. S. 356 23
Vilas *vs.* Manila, 220 U. S. 345, 360 19
Villanueva *vs.* Villanueva, 239 U. S. 293 11
Watson *vs.* Jones, 13 Wall. 679 18
White Lick Society of Friends *vs.* White Lick Society of Friends, 89 Ind. 136 18
Williams' Admr. *vs.* Newman, 93 Va. 719, 724 23

STATUTES CITED.

Act of Congress of July 1, 1902, §10 (32 Stat. 695) 11
Act of Congress of Sept. 6, 1916, §5 (39 Stat. 727) 11
Act of Congress of Feb. 13, 1925, §7 11
Judicial Code (of 1911), §248 11
Philippine Code of Civil Procedure, §§110, 121, 122, 126 23
U. S. Code Annotated, Title 28, Ch. 9, Sec. 349 11
U. S. Code Annotated, Title 48, Ch. 5, Sec. 1142 10

TEXT BOOKS CITED.

Alcubilla, Diccionario, Vol. 1, p. 972 5
Alcubilla, Diccionario, Vol. 2, pp. 259, 261 18
Burn, Ecclesiastical Law, Vol. 4, p. 1 16
Pitonius, De Controversiis Patronorum, Tom. 1, p. 275 21

Supreme Court of the United States

OCTOBER TERM, 1928.

No.....

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* ADELAIDA GONZALEZ,
Petitioner,

vs.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA.

PETITION FOR WRIT OF CERTIORARI.

May it please the Court:

The petition of Raul Rogerio Gonzalez, by his Guardian *ad litem* Adelaida Gonzalez, respectfully shows to this Honorable Court:

A.

Summary Statement of the Matter Involved.

This is an application for a writ of certiorari to review a final judgment of the Supreme Court of the Philippine Islands, entered on February 18th, 1928 (R., pp. 397, 398), upon the denial of a petition for rehearing (R., p. 397), reversing by a divided Court a judgment of the Court of First Instance of Manila (R., pp. 293, 294) in favor of the present petitioner (plaintiff below), requiring the respond-

ent (defendant below) to pay to plaintiff the sum of 173,725 Pesos ($86,862.50 American currency), representing the income from 1911 to 1925 of a certain Foundation for a Chaplaincy, established by the Will of plaintiff's ancestress and the deed of her executor, and to appoint plaintiff to such Chaplaincy in accordance with the Will of the Foundress. Upon such reversal the Philippine Supreme Court directed a dismissal of the complaint (R., p. 398).

The facts out of which the controversy arises will be stated as briefly as their complicated nature permits.

In 1816 Doña Petronila de Guzman made a Will in which she directed her executor to constitute certain real property into a collative chaplaincy, the foundation thereof to be effected immediately after her death. She designated her great grandson Don Esteban de Guzman to be the first chaplain "and in his default, the nearest relative, and in default of the latter, a collegian of San Juan de Letran who should be an orphan *mestizo* native of this said Town" (R., pp. 60-62, 317). She requested the Chaplain to celebrate sixty masses annually for the souls of testatrix and of certain of her relatives. She designated the President of the College of San Juan de Letran to be patron of the Chaplaincy, and appointed her Executor (her grandson, and father of the designated Chaplain) to be administrator of the Chaplaincy during the minority of the Chaplain, who was still under age when the testatrix died (R., p. 320). In 1820, after her death, her Executor by appropriate formal instruments, with the approval of the *Promotor Fiscal*, transferred the property

> "to the spiritual properties of this Archbishopric, with the restriction that, as a spiritual property, it cannot be alienated or converted into any other

estate for any cause, even though of a more pious character, (the grantor) protesting that if the contrary should be done from now until then, he declares null and without value or effect whatever may be done or executed contrary to the tenor of these presents" (R., pp. 318-320).

The then Archbishop found the endowment sufficient for the support of the Chaplain and approved the Foundation, and the Chaplain designated by the testatrix was appointed and served as such (R., pp. 42-58, 321). At the time of his appointment he was thirteen years old (R., pp. 35, 322). He was succeeded from time to time by four other descendants of the Foundress, the latest of whom, Angel Gonzalez, the Father of the petitioner, was appointed in 1901, and served until December 6th, 1910, when he resigned. Since that date the Chaplaincy has been vacant (R., pp. 35-36).

At the time of the institution of the Chaplaincy the annual income of the property of the Foundation was 180 Pesos (R., p. 50). This has increased in present times to well over 12000 Pesos per year (R., pp. 90, 91). The present cost of having sixty masses said per year by some one other than the Chaplain, when the Chaplaincy is vacant, or the incumbent is not a duly ordained and qualified priest, is not over 300 Pesos (R., p. 323) per year, so that the present net income of the Foundation, which the Foundress so clearly intended should always be enjoyed by some one of her blood, is fully 12000 Pesos per year.

After the resignation of Angel Gonzalez as Chaplain in 1910 there was an accounting and settlement of the income of the Chaplaincy to the end of that year, and since that time the Chaplaincy has been vacant and the income

has been applied by the defendant to other purposes (R., pp. 112, 324). The defendant has also caused the property to be registered in his own name and official capacity by a Torrens title f e of any trust (R., pp. 67, 68).

The plaintiff, who is the eldest son of Angel Gonzalez, the last Chaplain, and the nearest relative in succession to the first Chaplain and to the Foundress, applied for appointment as Chaplain. By a letter of February 25, 1922 (Exh. B, R., pp. 58, 59), the President of the College of San Juan de Letran, the Patron of the Chaplaincy under the Will of the Foundress, presented plaintiff to the Archbishop for such appointment, certifying that he was the heir to the Chaplaincy. By letter dated March 20th, 1922, addressed to plaintiff's Father, the Archbishop rejected the application upon the ground that under the Code of Canon Law promulgated in 1918 certain ecclesiastical qualifications were required for the office of Chaplain, which were not possessed by plaintiff (Exh. C., R., pp. 59, 60). Prior to 1918 the only relevant requirement was one of age, which was met by plaintiff at or before the time of the trial of the cause (R., p. 328). As indicated in the concurring opinion of Mr. Justice Malcolm in the Court below (R., p. 347):

> "Broadly speaking, Raul Rogerio Gonzalez met the requirements of the Church before the Canon Law of 1918 went into effect."

By the *Codex Juris Canonici* promulgated by the Pope in 1918, it was provided (R., pp. 346, 347):

> "The Chaplaincies or simple benefices are conferred on clericals of the secular clergy."

Under this canon, in order to be a "clerical", one must have the "first tonsure"; have begun the study of theology and be a "bachiller" (R., p. 36). This term is defined in Alcubilla's Diccionario (Vol. 1, p. 972), as meaning the first Academic Degree. The plaintiff does not possess these qualifications, but it is undisputed that no one of the five previous incumbents of the benefice was a "clerical" or "clerigo" and also that plaintiff possesses "more learning and intelligence than any previous Chaplain at the time of his appointment" (R., p. 373). The question is thus squarely presented whether the Canon of 1918 is effective to bar plaintiff's appointment and also to authorize the Archbishop to divert the income of the Foundation to purposes not contemplated by the Foundress. It is to be noted that from the time of the foundation of the Chaplaincy the successive incumbents of the benefice were not at the time of their respective appointments qualified to say the masses provided for by the Foundress, and that it was prescribed in 1901 in respect to the last preceding incumbent that he should be under the "obligation of ordering to be said by means of a priest, while he himself cannot say them, sixty masses annually according to the will of the Foundress" (R., p. 323).

None of the previous Chaplains was a "clerigo" at the time of his appointment (R., p. 36), and it does not appear that any ever became a priest. It was established that the plaintiff was the nearest surviving relative of the Foundress and of the first Chaplain, and that no other relative made any claim to the Chaplaincy (R., pp. 327, 328, 372).

The Foundress and her executor manifestly contemplated the following as the objects to be attained by the establishment of the Chaplaincy:

1. That its emoluments should be enjoyed by her nearest surviving relative, so long as there might be one available, and in default of such relative by a student of a particular description of the College of St. Juan de Letran.

2. That sixty masses a year for the repose of her soul, and of the souls of certain of her family, should be said by the Chaplain, if qualified, and if not by some qualified priest at the expense of the income of the Foundation.

3. That neither the property nor the income should ever be diverted to any other purpose.

The reversal by the Philippine Supreme Court of the judgment in favor of plaintiff rendered by the Court of First Instance leaves the defendant free to proceed with this diversion of trust funds which has continued for the past eighteen years, unless some other and different proceedings shall be brought against him by a class which would necessarily include plaintiff, and upon the same facts which appear in the present Record.

B.

Reasons Relied on for the Allowance of the Writ.

1. The Philippine Supreme Court in this case has decided an important question of both local and general law upon which there is no controlling prior decision of this or any other American Court, and which it is important should be settled by a decision of this Court.

2. The Philippine Supreme Court in this case has decided an important question of general law in a way which, it is submitted, is untenable and is in conflict with the weight of authority on analogous questions.

3. The Philippine Supreme Court in this case has rendered a decision which permits the radical changes in the Canon Law made in 1918 to operate retroactively in the Philippine Islands, in such a way as to divest long vested rights of property, to defeat the testamentary intentions and directions of the Foundress of a benefice, and to divert the income of the Foundation to purposes not contemplated by her, all contrary to the Organic Law of the Islands, the Treaty of 1898 with Spain and the Constitution of the United States.

4. By the decision sought to be reviewed, a fiduciary is permitted, by a change in its internal law and by its own interpretation and application thereof, to apply to its own use the income of a Foundation created for another specific purpose.

WHEREFORE your Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the Philippine Islands, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the Record and all proceedings in the case numbered and entitled on its docket "G. R. No. 27619, Raul Rogerio Gonzalez, by his guardian *ad litem* Adelaida Gonzalez, Plaintiff and Appellee, *vs.* The Roman Catholic Arch-

bishop of Manila, Defendant and Appellant," and that the said judgment of said Supreme Court of the Philippine Islands may be reversed by this Honorable Court, and that your Petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your Petitioner will ever pray.

RAUL ROGERIO GONZALEZ,

By his Guardian *ad Litem*
Adelaida Gonzalez,
Petitioner.

By FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
ALLISON D. GIBBS,
Counsel for Petitioner,
2 Rector Street,
New York City, N. Y.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1928.

No.....

RAUL ROGERIO GONZALEZ, by his Guardian *ad Litem*, Adelaida Gonzalez,
Petitioner,

vs.

THE ROMAN ARCHBISHOP OF MANILA.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinions of the Courts Below.

The Opinion in the Court of First Instance of Manila is not reported. It was rendered on December 20th, 1926, and will be found in the Record at pp. 230-294. The Opinions in the Philippine Supreme Court (two judges not sitting) have not yet appeared in the Philippine Reports received in this country. They were rendered on February 4, 1928, and will be found in the Record as follows:

Opinion of the Court by Street, J., at pp. 315-341;

Concurring opinion by Malcolm, J., at pp. 342-353;

Dissenting opinion by Johns, J., at pp. 353-391.

II.

Jurisdiction.

1. The date of the decision to be reviewed is February 4th, 1928 (R., p. 315). The Petition for Rehearing was denied on February 16th, 1928, and judgment entered on February 18th, 1928 (R., p. 397). This application, if docketed prior to August 18th, 1928, is therefore timely.

2. (a) In the Court of First Instance the plaintiff (petitioner here) sought two forms of relief, a mandamus requiring the defendant to appoint him to a certain benefice or Chaplaincy, to which he claimed to be entitled under the Will of his ancestress, the Foundress of the endowment, and an accounting for and payment to him of the income of the Foundation during the vacancy of the benefice (R., pp. 7, 8). The Court of First Instance ruled that he was entitled to relief in both aspects and awarded him a money judgment in the sum of 173,725 Pesos, being the equivalent of $86,862.50 (R., p. 293). The Philippine Supreme Court reversed this judgment and dismissed the Complaint (R., p. 398). The value in controversy thus exceeds $25,000. The value of the Philippine Peso is fixed by statute at two to the dollar (U. S. C. A., Title 48, Chap. 5, Sec. 1142).

(b) In the Courts below the plaintiff also claimed that to permit him to be deprived of his right to the Chaplaincy and its income by virtue of a change in the Canon Law of the Roman Catholic Church promulgated in 1918 was contrary to the Constitution of the United States, the Treaty of 1898 with Spain, the Organic Act of the Philippine Islands and the Philippine Civil Code and other statutes (R., p. 392). This claim was in effect sustained by the Court of First Instance (R., p. 278) and denied by the Philippine Supreme Court (R., pp. 338, 348).

Therefore the Constitution, certain statutes and a Treaty of the United States are all involved in this case.

3. The jurisdiction of this Court is invoked under Section 7 of the Act of February 13, 1925 (U. S. C. A., Title 28, Chap. 9, Sec. 349) re-enacting in substance Section 5 of the Act of September 6, 1916 (39 Stat. 727) which granted such jurisdiction "in any case in the Supreme Court of the Philippine Islands wherein the Constitution, or any statute or treaty of the United States is involved or wherein the value in controversy exceeds $25,000".

4. The grounds of this Court's jurisdiction to review the final judgments of the Philippine Supreme Court by certiorari are substantially the same as by appeal or writ of error under preceding legislation.

See §10, Act of July 1, 1902 (32 Stat. 695),
§248, Judicial Code of 1911,
§5, Act of September 6, 1916 (39 Stat. 727).

The following cases among others, sustain such jurisdiction.

De La Rama vs. *De La Rama,* 201 U. S. 303; 241 U. S. 154;
Villanueva vs. *Villanueva,* 239 U. S. 293;
Cariño vs. *Insular Government,* 212 U. S. 449;
Ingenohl vs. *Olsen,* 273 U. S. 541.

The amount in controversy being definitely fixed by the Record as well in excess of the jurisdictional requisite, this Court is vested beyond question with jurisdiction of the entire case, and it is therefore unnecessary upon this application to discuss further the other jurisdictional grounds.

III.

Statement of the Case.

A full statement of the case, as succinct as the somewhat involved facts and the length of the Record permit, has been given under the heading "A" in the Petition (*supra*, pp. 1-6). In the interest of brevity this statement will not be repeated at this point. The difficulty of attaining the proper degree of brevity, and at the same time the "studied accuracy * * * and clearness" required by this Court (*Furness Withy & Co., Ltd.* vs. *Yang Tsze Insurance Association, Ltd.*, 242 U. S. 430) will be realized when it is considered that the Opinions below make up a total of 140 printed pages. Repetition will therefore be sedulously avoided, and such further discussion of the facts as appears necessary will be found in the Argument.

The Opinions below state the facts and present both sides of the case so fully and fairly that there will be little occasion for this Court, upon this application, to examine further into the Record. Especial attention is invited to the excellent dissenting opinion of Mr. Justice Johns (pp. 353-391).

IV.

Specification of Errors.

1. The Supreme Court of the Philippine Islands erred in finding and holding that plaintiff was not entitled to an accounting of the income of the Foundation, established by Petronila de Guzman, during the vacancy of the benefice.

2. Said Court erred in finding and holding that plaintiff was not entitled to payment of the income found due upon such accounting, or any part thereof.

3. Said Court erred in finding and holding that plaintiff was not entitled to appointment as Chaplain pursuant to the Will of Petronila de Guzman.

4. Said Court erred in finding and holding that plaintiff was not entitled to any relief in this suit.

5. Said Court erred in finding and holding that relief could be granted only in a class suit in behalf of all the descendants of Petronila de Guzman, and that this suit could not be so treated.

6. Said Court erred in finding and holding that the Canon of 1918 was effective to debar plaintiff from appointment to the Chaplaincy and from receiving the income of the Foundation.

7. Said Court erred in finding and holding that plaintiff should have appealed to the Pope from the decision of the Archbishop.

8. Said Court erred in finding and holding that the ecclesiastical authorities were competent to be legislators and judges in their own cause.

9. Said Court erred in finding and holding that plaintiff's right to the income of the Foundation was not protected by the Constitution of the United States, the Treaty of 1898 with Spain and the Organic Act of the Philippine Islands.

10. Said Court erred in reversing the judgment of the Court of First Instance and dismissing the Complaint.

V.

ARGUMENT.

Summary of the Argument.

Point A. The decision below defeats the testamentary intentions of Petronila de Guzman and permits the diversion of the income of the Foundation established by her executor pursuant to her will into channels expressly excluded by the deed of Foundation.

Point B. The decision below permits the changes in the Canon Law made in 1918 to operate retroactively in such a way as to defeat and divest rights of property accruing to petitioner under the will of his ancestress and permits the ecclesiastical authorities to be both legislators and judges in their own cause.

Point C. If this court considers that a class suit is necessary, this action should be so treated, in order to prevent injustice and unnecessary delay and circumlocution.

POINT A.

The Testamentary Intentions of Petronila de Guzman.

Out of the long history of more than a hundred years shown by this voluminous Record, one fact stands out clearly; the testamentary intention disclosed by the Will of Petronila de Guzman, and emphasized by the deed or contract of Foundation made by her Executor, that her nearest male relative in the line of descent, if any there should be, should enjoy the revenues of the Foundation, subject only to the duty of saying a certain number of masses in each

year, if qualified to do so, or causing them to be said by a qualified priest and paying the customary charge therefor out of the income.

She may have cherished the pious hope that each successive incumbent should in due course become a priest, but the history of the Foundation shows that none of them did so, thus demonstrating, by practical construction, that this was not a condition, either precedent or subsequent, to the enjoyment of the benefice.

In the case of these ancient Chaplaincies, the Philippine Courts usually give great weight to the course actually pursued through their history.

> See *City of Manila* vs. *Archbishop of Manila,* 36 Phil. Rep. 815;
> *Capellania de Tombobong* vs. *Cruz,* 9 Phil Rep. 145.

These facts are undisputed, but the Court below has permitted the purpose of this Foundation to be defeated and the income of the Foundation to be applied to general educational purposes, in direct contravention of the condition in the deed of Foundation against the conversion of the property "into any other estate for any cause, even though of a more pious character" and the declaration that anything done to the contrary shall be null and void (R., p. 320). There has been an express and undenied breach of this condition by the defendant in the registration of the property in his own name by a Torrens title (R., p. 323). It is true that the right to proceed independently against this registration has been reserved (R., p. 340) but the fact of the registration is of cardinal evidentiary importance as showing the disregard by the ecclesiastical authorities of

the testamentary limitations under which the property was received and held, and thus has a direct bearing upon the right to an accounting for the income. The registration should have been in the name of the "Capellania" itself as a juristic person.

> See *Capellania de Tombobong* vs. *Antonio,* 8 Phil. Rep. 683;
> *Capellania de Tombobong* vs. *Cruz,* 9 Phil. Rep. 145.

It is to be observed that at no stage of the cause has the lawful character of the Foundation, under the applicable local law, been questioned.

It was assumed, as apparently not subject to controversy, in *Gonzalez* vs. *Harty,* 32 Phil. Rep. 328 (1915), in which the last preceding incumbent, after resignation, sued the Archbishop for a judicial accounting and was defeated upon the sole ground that he was concluded by his own acceptance of a previous voluntary accounting and payment, which was not impeached upon any sufficient grounds. It is significant that upon such voluntary accounting, the net income of the Chaplaincy during the last preceding vacancy had been accounted for and paid to the plaintiff in the case cited. Thus the same rule was applied on this subject in the Philippines as prevails under English Ecclesiastical Law, namely, that the income of a benefice during a vacancy goes to the next incumbent. (See Burn, Ecclesiastical Law, Vol. 4, p. 1, *et seq.*)

The Canon (§1481) providing for a different disposition of the income of a vacant benefice (R., pp. 40, 96) appears to be another of the innovations of 1918, and it would, moreover, be inappropriate to apply it to a "Capellania colativa

familiar'' limited to a particular family, such as this (R., pp. 360, 361).

The inviolability of lawful testamentary intentions has been repeatedly declared and sustained by this Court. Upon this point it is deemed unnecessary to cumulate authorities, but reference may be had to

Gray vs. *Noholoa,* 214 U. S. 108;
Kenaday vs. *Sinnott,* 179 U. S. 606, 616.

POINT B.

The Effect of the Canon of 1918.

It is this point which justifies the opening sentence of Mr. Justice Malcolm's concurring Opinion:

> ''This is a most unusual case without a parallel in American or Spanish jurisprudence'' (R., p. 342),

and makes it particularly appropriate and desirable that the question be determined clearly, compendiously and conclusively by this Court.

The essence of the question may be thus summarized:

> May the unquestionable powers of the duly constituted ecclesiastical authorities of a Church to regulate its spiritual affairs and ecclesiastical discipline be so applied as to divert the income of a private testamentary Foundation from the *purposes* or the *persons* contemplated by the Will and the deed of Foundation and may such authorities both legislate and adjudge in their own favor to this end?

It is impossible to condense within the limits indicated by this Court as appropriate for a brief in support of a

petition for certiorari an exhaustive argument of all of the aspects of this question, involving as it does the nature of "Chaplaincies," "collative" or otherwise, under Spanish and Canon Law; the general law of ecclesiastical benefices; and the limitations properly to be placed under the Constitutional guarantees upon the effect of ecclesiastical action, whether local or general, upon rights of property previously created and existing. For the purposes of this brief, the argument of this Point will be limited to the enunciation of a series of propositions, supported by authority, which it is believed are applicable to the case at bar.

1. The plenary power of ecclesiastical authority is limited to matters ecclesiastical and spiritual. When property rights are affected, the law of the land must prevail.

Watson vs. *Jones*, 13 Wall. 679;
White Lick Society of Friends vs. *White Lick Society of Friends*, 89 Ind. 136.

2. The right of the persons entitled under the Will of the Foundress to enjoy the income of the benefice is a property right.

This was not questioned by the Court below, and the existence of some outstanding property rights was recognized by the express reservation in the Court's decision (R., pp. 340, 341).

When the similar Chaplaincies in Spain were disamortized by legislation, the property rights were preserved for the "nearest relative of the preferred line", and conflicting claims were determined by the Civil Courts.

See 8 Jurisprudencia Civil 372, May 30, 1863;
Alcubilla's Diccionario, Vol. 2, pp. 259, 261.

This disamortization, however, was not extended to the Philippines.

See *Catholic Church* vs. *Municipality of Badoc*, 10 Phil. Rep. 659, 671.

3. Under the Will and the deed of Foundation it was sufficient that the candidate should be qualified ultimately to become a priest. He was not required to be already a "clerical".

This was in effect held by both Courts below and is further demonstrated by the whole history of the Chaplaincy.

4. The change of the Canon in 1918, however effective to regulate the performance of ecclesiastical functions by a person presented for institution as Chaplain, cannot operate to deprive him, if qualified under the Will of the Foundress, of the secular and pecuniary benefits of the Foundation, without contravening the fundamental law guaranteeing property rights. In this Chaplaincy the incumbent is not required to perform any ecclesiastical functions in his own person (*"per si ipsum"*) but only to cause masses to be said and pay for them.

It is contrary to the underlying conceptions of American jurisprudence, which now protect the sanctity of property and contract rights in the Philippines (*Cariño* vs. *Insular Government*, 212 U. S. 449, 459; *Vilas* vs. *Manila*, 220 U. S. 345, 360), that any ecclesiastical power, however exalted, should first, as legislator, change its own laws or canons to the prejudice of outstanding property rights, and then as judge, or administrative functionary exercising discretionary power, interpret and enforce them, to the im-

poverishment of the individual or individuals in whom the property rights subsist and to the enrichment of its own coffers. This suit is in name against the Archbishop of Manila, but he stands as the representative of the Church (see *Harty* vs. *Sandin*, 11 Phil. Rep. 451) which, in the territories acquired by the Treaty of 1898 with Spain is a solidary juristic entity capable of holding and owning property.

Ponce vs. *Roman Catholic Church*, 210 U. S. 296.
Barlin vs. *Ramirez*, 7 Phil. Rep. 41;
Evangelista vs. *Ver*, 8 Phil. Rep. 653.

When the Church holds property in a fiduciary capacity, as here, it cannot by a change in its internal law alter or eliminate its fiduciary responsibilities, and then by the mouth of its local representative determine the cause in its own favor.

For this reason, among others, the possible appeal to the Pope, mentioned in the opinion of the Court (R., p. 330) and in the concurring opinion (R., p. 347), would manifestly have been an idle formality, not to be required as a condition precedent to recourse to the Civil Courts (see Opinion of Trial Court at p. 274). The same rule should apply as in the case of confiscatory legislation or regulation by one of the American States. It is not required that all remedies in the State Tribunals be exhausted before applying for relief to the Federal Courts.

See *Prendergast* vs. *New York Telephone Co.*, 262 U. S. 43, 48;
Banton vs. *Belt Line Ry.*, 268 U. S. 413, 417.

The Canon Law itself has recognized the lack of power in the ecclesiastical authorities to vary the terms of such a bequest. In the monumental work of Franciscus Maria Pitonius, an "*advocatus Romanus*" with an evidently extensive practice before the Roman Rota, published in Parma in 1719, and entitled:

> "De Controversiis Patronorum, necnon ab Eis Praesentatorum ad Beneficia et Capellanias quascunque, et alia Relicta Pia" ("Concerning the controversies of Patrons as well as of those presented by them to Benefices and Chaplaincies of whatever kind and to other Pious Endowments");

it is said, in Allegatio XXXIII, n. 37 (Tom. 1, p. 275),

> "Neque potuisset Episcopus per ejus sententiam etiam expressam institutionem praeferentem alterare qualitatem dictae Capellaniae contra voluntatem Fundatricis in praejudicium eorum quibus ejus vigore competit jus";

which may be translated as follows:

> "Nor can the Bishop, even by his own express decree conferring institution, alter the quality of such a chaplaincy against the will of the Foundress and to the prejudice of those to whom the right pertains by its own force."

In regard to the Chaplaincy there discussed, it was held that it was not required to be held by a priest, because the obligation to say masses was not coupled with a clause requiring the Chaplain to do so in his own person ("Nisi etiam concurrat obligatio celebrandi cum clausula *per si ipsum*").

POINT C.

This should be treated as a class suit, if such a suit is deemed necessary.

It appears from the Record that there is only one other person who might claim to be qualified and entitled under the Will of the Foundress and that he has expressly disclaimed any rights he may have (R., pp. 372, 265, 136). The plaintiff therefore embodies in his own person the "class" entitled to relief. To guard against any possible unjust result, leave might be granted, upon a reversal and remand, to all other descendants of the Foundress to come in as co-plaintiffs upon equitable terms, and assert their claims, if any, to share in the benefit of the judgment. This would be in accord with the spirit of the prevailing opinion (R., p. 340).

The situation is this: the litigation has been pending for nearly four years; all of the controversial facts have been determined, an accounting has been had and the amount of the accumulated income from the Foundation which has *not* been applied in accordance with the Will has been adjudged, and the correctness of the figures, which were furnished by the defendant, is apparently unchallenged. Whether the plaintiff is solely entitled or whether some or all of the other descendants of the Foundress should have an opportunity to come in and assert any claims they may have, this result at least should be preserved, and the defendant should no longer be permitted to retain funds to which in any event he is not entitled, officially or individually, or to continue to misapply them to other uses even if "more pious", as he is apparently doing in many other cases as well as in this (R., pp. 112, 131).

The Court below recognized this in principle (R., pp. 340, 398), but its judgment places upon the "Class" the burden of doing all over again that which has already been done, whether for them collectively or for himself individually, by the plaintiff. The defendant cannot be prejudiced by being spared the expense of a repetition of the litigation under a different title.

There is good American precedent for permitting a suit originally brought by one party, solely on his own behalf, to be converted by order of Court into a class suit for the benefit of all similarly situated, and affording them all an opportunity to come in and assert their claims.

> See *Williams' Admr.* vs. *Newman,* 93 Va. 719, 724;
> *Neeley* vs. *Jones,* 16 W. Va. 625, 648.

This Court has always regarded class suits as properly subject to great elasticity of treatment.

> See *Smith* vs. *Swormstedt,* 16 How. 288;
> *Stewart* vs. *Dunham,* 115 U. S. 61;
> *Supreme Tribe of Ben Hur* vs. *Cauble,* 255 U. S. 356.

The Philippine Code of Civil Procedure permits amendments at any stage including appeal (§110), and the voluntary intervention or compulsory joinder of parties (§§121, 122), and where an answer has been interposed the granting of "any relief consistent with the case made by the complaint and supported by the evidence and embraced within the issue (§126).

If a class suit is deemed necessary, this suit now before the Court can and should be so treated, as pointed out by Mr. Justice Johns in his dissenting Opinion (R., p. 390).

CONCLUSION.

This cause is pre-eminently one calling for the exercise by this Court of its supervisory powers, in order that a novel, difficult and important question may be determined, delay avoided, justice done and the continued diversion of trust funds prevented. To such end a writ of certiorari should be granted as prayed, and this Court should review and reverse the decision of the Supreme Court of the Philippine Islands, determine the rights of the parties and remand the cause with directions to affirm the decision of the Court of First Instance of Manila, or to treat this as a class suit and take such further proceedings as may be appropriate in the premises.

Respectfully submitted this 26th day of June, 1928.

FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
ALLISON D. GIBBS,
Counsel for Petitioners,
2 Rector Street,
New York City, N. Y.

FILE COPY

FILED
DEC 14 1928
CHARLES ELMORE CRO
CL

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 620

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* ADELAIDA GONZALEZ,

Petitioner,

vs.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR PETITIONER.

FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
ALLISON D. GIBBS,
Counsel for Petitioner,
2 Rector Street,
New York City, N. Y.

Panplick Press, Inc., 22 Thames St., New York, U. S. A.